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BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2004-1678

ADAM CHRISTOPHER SWEARINGEN

1621 W. 25<sup>th</sup> Street, #224

San Pedro, CA 90731

OAH No. L-2008070266

Psychiatric Nurse License No.

PT 30194

Respondent.

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of the Department of Consumer Affairs<sup>1</sup> as the final Decision in the above-entitled matter.

This Decision shall become effective on January 29, 2009.

IT IS SO ORDERED this 12th day of December, 2008.



PATRICIA HARRIS

Deputy Director, Board/Bureau Support  
Department of Consumer Affairs

<sup>1</sup>Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE  
BUREAU OF VOCATIONAL NURSING AND  
PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

ADAM CHRISTOPHER SWEARINGEN,

Psychiatric Technician's  
License No. PT-30194,

Respondent.

Case No. PT-2004-1678

OAH No. L-2008070266

**PROPOSED DECISION**

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Redlands on September 29, 2008. Complainant was represented by Nicholas A. Sanchez, Deputy Attorney General. Respondent was present and represented himself.

Oral and documentary having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. (A) On or about April 2, 2008, Accusation, Case No. PT-2004-1678, was made and filed by Teresa Bello-James, J.D., M.S.N., R.N., in her official capacity as Executive Officer of the Bureau of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California (hereinafter Bureau).
2. On or about June 22, 1998, the Bureau issued psychiatric technician's license no. PT- 30194 and licensing rights to respondent Adam Christopher Swearingen. Said license is active and has been renewed through February 28, 2010, when it will expire unless renewed.
3. On or about March 19, 2006, respondent filed an Application for Renewal of License with the Board. On his renewal application, he disclosed that he had been convicted

of a violation of law for "possession of narcotics" since he last renewed his psychiatric technician's license.

4. (A) On or about April 11, 2005, before the Superior Court of California, County of Los Angeles, in *People v. Adam Swearingen*, Case No. NA065191, respondent was convicted on his plea of guilty of possessing the controlled substance, methamphetamine, with a loaded firearm in violation of Health and Safety Code section 11370.1, subdivision (a), a felony and crime not necessarily involving moral turpitude.<sup>1</sup>

(B) As a result of his plea, the court suspended the imposition of sentence and placed respondent on formal probation for three years on condition, in part, that he serve 19 days in the county jail with credit for having served the 19 days, pay fines and fees of approximately \$420, complete 60 days of community service with Cal Trans, not drink any alcoholic beverage, not use or possess any narcotic or dangerous drug or associated paraphernalia, stay away from places where drug users or sellers congregate, submit to periodic anti-narcotic and alcohol testing as directed by a probation officer, not associate with any gang members, cooperate with the probation officer in a plan for substance abuse therapy, seek and maintain schooling or employment, support his dependents, not own or use any dangerous weapon or firearm, submit to search and seizure at any time, obey all laws and order of the court, and register with a local police or sheriff's department as a drug offender.

(C) The facts and circumstances of respondent's offense were that, on March 30, 2004, at approximately 9:05 p.m., he was riding in a black, 1995 Cadillac STS sedan with two other persons in the Los Angeles harbor area. Respondent was sitting in the back seat of the vehicle. Los Angeles Police Department officers were patrolling the area as a part of a gang enforcement detail and stopped the vehicle for having a non-operating taillight. The police officers noticed a strong odor of marijuana emanating from the vehicle. The driver who was a woman did not have her driver's license. The police officers also recognized the front passenger, who was the driver's husband, as a known gang member and parolee for having committed manslaughter. The police officers had the couple and respondent step out of the sedan. Respondent had been wearing a nylon satchel bag around his shoulders and chest. Upon searching respondent's satchel bag, the police officers found a loaded nine millimeter handgun, three small zip lock baggies containing marijuana, and a four-inch glass pipe with a small amount of methamphetamine in the bulb or bowl. The driver of the vehicle was given a traffic citation. Her husband was arrested for a parole violation. Respondent was arrested for possessing an unregistered firearm. He told the officers that he had bought the firearm for \$400 from someone that he met or saw on the street.

(D) Respondent's conviction for possessing a controlled substance with a loaded firearm was for a crime substantially related to the qualifications, functions, or duties of a licensed psychiatric technician under California Code of Regulations, title 16, section

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<sup>1</sup> Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, and is categorized as a dangerous drug under Business and Professions Code section 4022.

2578, subdivision (f), in that the conviction was for a crime involving the administration of a narcotic or dangerous drug and evidences a present or potential unfitness to perform functions of a psychiatric technician in a manner consistent with the public health, safety, or welfare.

5. (A) On June 22, 2005, the Superior Court scheduled a probation violation hearing on the charge that respondent deserted probation. On July 14, 2005, the court revoked respondent's probation after reading the report of the probation officer and issued a bench warrant for respondent's arrest.

(B) On May 25, 2006, respondent appeared in court with an attorney for a hearing on the bench warrant. The matter was continued to allow the probation department to prepare a supplemental report. Respondent was taken into custody and the bench warrant was recalled.

(C) On June 21, 2006, respondent appeared in court for the hearing on the supplemental probation report while in custody. The court released respondent on his own recognizance and scheduled a probation violation hearing.

(D) At the probation violation hearing on June 28, 2006, the court reinstated respondent's probation on the same terms and conditions and gave him credit for having served 50 days in custody.

(E) On January 31, 2007, the court held another probation violation hearing during which it received narcotics testing data and log and heard respondent's testimony. The court found respondent in violation of probation for an undetermined reason, revoked his probation, and sentenced him to two years in state prison with credit for having already served 69 days.

6. (A) While incarcerated in the state prison, respondent completed the orientation phase of a substance abuse counseling program offered by the Phoenix House. For two months, he received and took part in group therapy for two hours daily. In August 2007, respondent attained a Certificate of Achievement from the program.

(B) In or about October 2007, respondent was released from prison on parole and entered the drug treatment furlough program at the Civigenics facility in Long Beach, a community-based, residential recovery program designed to meet the needs of persons in the criminal justice system. For the next eight or nine months, respondent received group and individual therapy and relapse prevention counseling. He completed a course in anger management. He received vocational counseling services. He was subjected to random urinalysis drug testing. At the facility, respondent attended sessions of Narcotics Anonymous and obtained a sponsor, Juanita R. Walker. He also worked for the facility in the kitchen. He was a trustworthy, reliable, and responsible employee and worked well under pressure. Respondent participated in facility functions and community programs of the Civigenics residential drug program and took an active part in developing his own

treatment plan. His case manager found that respondent made a commitment to complete the program and made great strides in permanently changing his life. On or about January 12, 2008, respondent successfully completed the drug treatment furlough program at Civigenics.

7. (A) For the past six months, respondent has been active as a volunteer counselor at the Toberman Neighborhood Center in San Pedro. He advises at-risk youth against using drugs and directs a sports program for them. He helps the youth in completing job applications and developing their interview skills. In addition, respondent attends meetings of Narcotics Anonymous at the center. As corroborated by an intervention specialist at the center, respondent is a compassionate and dedicated volunteer who has helped to improve the lives of the youth and enjoys getting the youth to become involved in community activities.

(B) From April 14, 2008, through May 14, 2008, respondent completed an environmental safety training and employment program offered by the City of Long Beach and the Pacific Gateway Workforce Investment Network. He attended classes for eight hours per day for approximately four weeks. One of the training programs that respondent attended was a behavior-based safety training given on April 15, 2008.

(C) On June 10, 2008, respondent completed parole for his conviction and was discharged from parole supervision.

(D) Respondent is an active participant in his church. He attends weekly services and bible study classes at the Celebrate Recovery Church in Paramount. Once weekly, he also participates in group therapy and support group meetings at his church for his continuing drug recovery.

8. Respondent explains that he began using methamphetamine in or about 2004 due to depression. In 2003 and 2004, his brother died from AIDS, his grandfather passed away from cancer, and his best friend was killed. In 2003, he had been working as a psychiatric technician at Fairview Developmental Center for about six years but then accepted a promotion to work at Sonoma State Hospital in Santa Rosa. He moved to northern California with his girlfriend and their young son and a newborn son. His girlfriend, who was also employed as a psychiatric technician at Fairview Developmental Center, was not happy living in Santa Rosa. She did not work and respondent worked at night. When she did find a job in a group home, she brought her newborn son to work. Eventually, his girlfriend left respondent and moved back to San Pedro, taking their two children with her. Remaining by himself in Santa Rosa, respondent became more depressed and entered a hospital for treatment. He began using methamphetamine. He lost his job as a psychiatric technician. In or about early 2004, he returned to San Pedro where he began associating with persons who used drugs and was arrested.

9. Respondent admits his conviction and past drug use. He demonstrates remorse for his criminal conduct and regret for his decision to use drugs. He recognizes that his drug



use led to him losing his job, financial security, and family. He has no other convictions or history of discipline on his license.

10. Presently, respondent desires to retain his psychiatric technician's license and to work in his chosen profession in a drug counseling and recovery program. He believes his experience in recovering from drugs will help him to become an effective drug counselor. Respondent realizes that, if employed as a psychiatric technician, he could have access to drugs, care for difficult clients, and experience job stress. However, respondent indicates that he has developed self-awareness about his own weaknesses and the reasons that he began using drugs. From his drug recovery program, he believes that he has learned to appreciate life and how to avoid drug use. He asserts that he has a support system made up of his family and church and is active in his community. Respondent realizes that his recovery from drug use is a life-long process.

11. (A) From August 1996 through December 1997, respondent completed his education and training to be psychiatric technician at Cypress College. For the spring semester of the 1996-1997 school year, respondent was an honor roll student in the top six percent of his community college class. Prior to attending Cypress College, he obtained his high school diploma from the San Pedro Adult School.

(B) In a letter dated December 1996, Barbara Wallace, R.N., wrote that respondent performed exceptionally well in two of her classes in the health science department. He had exemplary class attendance, demonstrated a professional appearance and communication skills, and contributed to class discussions. In the clinical setting at Fairview Developmental Center, respondent was able to apply his theoretical knowledge by caring for medically-fragile consumers in a conscientious and competent manner.

(C) In a letter dated April 1998, Jane Boyce, R.N., M.S.N., indicated that respondent was an enthusiastic and competent student in both the classroom and clinical settings of the psychiatric technician program at Cypress College. He demonstrated "marvelous" interpersonal skills and a well-rounded, outgoing personality.

(D) In a letter dated April 1998, Max Selva, an instructor at Cypress College, stated that respondent was a "very good student" in his behavior modification, developmental disabilities, and psychiatric nursing class or classes. He had perfect class attendance. In the clinical setting, respondent's application of theoretical concepts was excellent and his attending to consumers was competent and professional. He was conscientious, showed outstanding workplace habits, and had positive relationships with other students, instructors, and hospital personnel.

(E) In a letter dated April 1998, Jane Pojar, a unit supervisor at Fairview Developmental Center in Costa Mesa, wrote that respondent had been employed there for eight months as a psychiatric technician trainee. Respondent was "extremely effective in working with developmentally disabled males" who had behavioral problems. He exhibited a calm demeanor as well as skill and knowledge. Ms. Pojar opined that respondent would

make an outstanding psychiatric technician and recommended him highly for any job where he could use his skills.

12. Respondent is 35 years old. He lives with his two boys, ages six and eight, and their mother in San Pedro and actively participates in his sons' lives. He attends their parent-teacher conferences and school events, is involved in their schoolwork, and coaches each of their youth football teams on the weekend. He spends evenings with his boys at home and also visits his own mother. The boys' mother and grandmother confirm that respondent is a loving and caring father and has changed his lifestyle and outlook.

13. The reasonable costs of investigation and enforcement of this matter are \$1,796.25, as established by the Certification of Prosecution Costs (Exh. 3). The Board incurred attorney costs of \$1,619.59 and paralegal costs of \$176.75, which services were performed by the Office of the Attorney General.

14. (A) When he filed his original Application for Psychiatric Technician Licensure on or about February 20, 1998, respondent wrote that he had been "convicted" of possession of a controlled substance in June 1994 but added that this was "not a conviction."

(B) In that prior criminal case, respondent entered a plea to the drug possession charge and the court deferred the entry of judgment on condition that respondent enter into a one-year drug diversion program and pay a fine of \$150. In or about August 1995, respondent completed the drug diversion program and the court set aside the deferred entry of judgment and dismissed the criminal charge or complaint.

(C) Based on Findings 14(A) - (B) above, it was not established that respondent has a prior conviction in 1994 for possession of a controlled substance. Complainant did not present a court record evidencing any such conviction and the testimony of respondent's mother, who is a county probation officer, that the charge was dismissed was credible. The Accusation also states that the deferred entry of judgment was set aside and the charge dismissed by the court.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

#### LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4521, subdivision (f), and section

490, in that respondent has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensed psychiatric technician, as forth in Finding 4 above.

2. Grounds exist to revoke or suspend respondent's license for unprofessional conduct pursuant to Business and Professions Code section 4521, subdivision (a)(4), in that respondent obtained or possessed the controlled substance or dangerous drug, methamphetamine, in violation of the law, based on Conclusions of Law No. 1 and Finding 4 above.

3. Grounds exist to direct respondent to pay the Bureau for its reasonable costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in that respondent has committed violations of the Psychiatric Technicians Law, as set forth in Conclusions of Law Nos. 1 - 2 and Finding 13 above. The reasonable costs of investigation and/or enforcement are \$1,796.25. It was not established that respondent necessarily has the financial ability or means to pay all of these costs to the Bureau at the present time.

4. Discussion—Based on Findings 3 - 12 and 14 above, respondent presented significant evidence of his rehabilitation from his conviction for possessing a controlled substance and his conduct in unlawfully possessing a controlled substance under the criteria set forth in California Code of Regulations, title 16, section 2579.1. Respondent's conviction was particularly serious in that it was a felony and involved the concurrent possession of a loaded firearm. After violating his criminal probation, respondent was sentenced and incarcerated in state prison. Respondent's conviction is relatively recent inasmuch as he was convicted approximately three years ago.

On the other hand, respondent has no other criminal record and has taken major rehabilitative steps since being released from prison on parole in or about October 2007. He completed a six-month residential drug treatment program during which time he was subjected to drug testing. Respondent has now been discharged from parole supervision. While receiving therapy in the residential program, he began attending meetings of Narcotics Anonymous and has continued to attend meetings at his church and the Toberman Neighborhood Center. He attends religious services and Bible study meetings and has volunteered his time and services at the neighborhood center counseling and coaching at-risk youth. Respondent has renewed his ties to his family and his mother. He lives with his two young boys and their mother and is active in their schooling and sporting events. He spends much of his time at home with his children. He no longer uses illegal drugs or associates with persons who use drugs. Both his mother and his girlfriend corroborate that respondent is a changed person. Respondent disclosed his conviction on his renewal application.

Based on the evidence of rehabilitation, public welfare and safety will not be compromised if respondent is allowed to retain his license subject to terms and conditions of probation designed to aid respondent in his continued recovery from past drug use and to prevent a recurrence of his conduct.



\* \* \* \* \*

WHEREFORE, the following Order is hereby made:

### ORDER

Psychiatric technician's license no. PT-30194 and licensing rights previously issued by the Bureau of Vocational Nursing and Psychiatric Technicians to respondent Adam Christopher Swearingen shall be revoked, based on Conclusions of Law Nos. 1 – 2 jointly and for all; provided, however, based on Conclusions of Law No. 4, said order of revocation will be stayed and respondent's license shall be placed on probation for five (5) years under the following terms and conditions.

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Bureau within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Bureau within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by respondent as part of his licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORTS

Respondent shall fully comply with terms and conditions of the probation established by the Bureau and shall cooperate with the representatives of the Bureau in its monitoring and investigation of the respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Bureau. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGES

Respondent shall notify the Bureau, in writing, within five (5) days of a change of residence or mailing address, of his new address and any change in his/her work and/or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Bureau, in writing, within five (5) days, if he leaves California to reside or practice in another state.

Respondent shall notify the Bureau, in writing, within five (5) days, upon his return to California.

The period of probation shall not run during the time respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYERS

When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of respondent's license. This notification to respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his probationary status with the Bureau prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Bureau's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Bureau. The reports shall be on a form provided by the Bureau, shall include a performance evaluation and such other information as may be required by the Bureau.

Respondent shall notify the Bureau, in writing, within five (5) days of any change in employment status. Respondent shall notify the Bureau, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. INTERVIEWS OR MEETINGS WITH BUREAU REPRESENTATIVES

Respondent, during the period of probation, shall appear in person at interviews and/or meetings as directed by the Bureau, or its designated representatives.

7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Bureau approved continuing education course except as approved, in writing, by the Bureau. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Bureau.

8. SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the Bureau, before commencing any employment, regarding the level of supervision provided to respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Bureau.

9. COMPLETION OF EDUCATIONAL COURSE

Respondent, at his own expense, shall enroll and successfully complete one (1) course substantially related to the violation(s) described in the Decision and Order no later than the end of the first year of probation; or respondent shall be suspended from practice, until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Bureau shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Bureau's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall cause the instructor to furnish proof to the Bureau within thirty (30) days of course completion.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Bureau, including any period during which suspension or probation is tolled.

Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. COST RECOVERY REQUIREMENTS

Respondent shall pay cost recovery to the Bureau in the sum of \$1,796.25, as set forth in Conclusions of Law No. 3 above.

Where an order for recovery of costs is made, respondent shall make timely payment as directed in the Bureau's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Bureau or pursuant to any Decision by the Bureau shall be considered a violation of probation.

The Bureau may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. Respondent shall enter into a formal agreement with the Bureau to reimburse the unpaid costs within that one year period. After the expiration of one year, respondent may request an extension of another year to pay the unpaid balance of the costs.

Except as provided above, the Bureau shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. EXAMINATION BY A PHYSICIAN

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician of his choice who meets minimum criteria established by the Bureau. The physician must be licensed in California and Board-certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Bureau's Disciplinary Order prior to the examination. Cost of such examination shall be paid by respondent.

Respondent shall cause the physician to complete a written medical report on a form provided by the Bureau. This report shall be submitted by the physician to the Bureau within ninety (90) days of the effective date of the Decision. If the examining physician finds that respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Bureau, in writing, within

five (5) working days. The Bureau shall notify respondent in writing of the examining physician's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Bureau is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Bureau.

13. PSYCHOLOGICAL EVALUATION

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a psychiatric or psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board-certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Bureau's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by respondent.

Respondent shall cause the evaluator to submit to the Bureau a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Bureau. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Bureau, in writing, within five (5) working days. The Bureau shall notify respondent in writing of the evaluator's determination of unfitness to practice and shall order respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Bureau is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Bureau.

If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Bureau's discretion. Cost of such therapy shall be paid by respondent.

14. CHEMICAL DEPENDENCY SUPPORT OR RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, respondent shall begin attendance or continue to attend a chemical dependency support group on a once weekly basis (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.



15. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

16. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

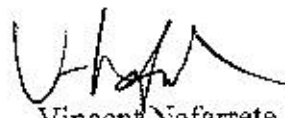
17. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Bureau or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Bureau and respondent's current employer.

18. VIOLATION OF PROBATION

If respondent violates the conditions of his probation, the Bureau after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, respondent's license will be fully restored.

Dated: Oct. 27, 2008



Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings

**FILED**

APR 2 2008

**Board of Vocational Nursing  
and Psychiatric Technicians**

EDMUND G. BROWN JR., Attorney General  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:  
  
ADAM CHRISTOPHER SWEARINGEN  
1621 W. 25th Street, #224  
San Pedro, CA 90731  
Psychiatric Technician License No. PT 30194

Case No. PT-2004-1678

**ACCUSATION**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.
2. On or about June 22, 1998, the Board of Vocational Nursing and Psychiatric Technicians issued Psychiatric Technician License Number PT 30194 to Adam Christopher Swearingen (Respondent). The Psychiatric Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2010, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the

///

1 following laws. All section references are to the Business and Professions Code unless otherwise  
2 indicated.

### 3 STATUTORY PROVISIONS

4 4. Section 4520 of the Business and Professions Code (Code) provides, in  
5 pertinent part, that the Board may discipline any licensed psychiatric technician for any reason  
6 provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code  
7 § 4500, et. seq.)

8 5. Section 4521 of the Code states:

9 "The board may suspend or revoke a license issued under this chapter [the  
10 Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

11 "(a) Unprofessional conduct, which includes but is not limited to any of the  
12 following:

13 . . . .

14 (4) Obtain or possess in violation of law, or prescribe, or except as directed by a  
15 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself or furnish or  
16 administer to another, any controlled substance as defined in Division 10 (commencing with  
17 Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022 .

18 . . . .

19 "(f) Conviction of any offense substantially related to the qualifications,  
20 functions, and duties of a psychiatric technician, in which event the record of the conviction shall  
21 be conclusive evidence of the conviction. The board may inquire into the circumstances  
22 surrounding the commission of the crime in order to fix the degree of discipline."

23 . . . .

24 6. Section 490 of the Code provides, in pertinent part, that the Board may  
25 suspend or revoke a license when it finds that the licensee has been convicted of a crime  
26 substantially related to the qualifications, functions, or duties of a licensed psychiatric technician.

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1                   7.       Section 492 of the Code states:

2            "Notwithstanding any other provision of law, successful completion of any diversion  
3 program under the Penal Code, or successful completion of an alcohol and drug problem  
4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
6 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in  
7 that division, from taking disciplinary action against a licensee or from denying a license for  
8 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
9 record pertaining to an arrest.

10            "This section shall not be construed to apply to any drug diversion program operated by  
11 any agency established under Division 2 (commencing with Section 500) of this code, or any  
12 initiative act referred to in that division."

13                   8.       Section 493 of the Code states:

14            "Notwithstanding any other provision of law, in a proceeding conducted by a board  
15 within the department pursuant to law to deny an application for a license or to suspend or revoke  
16 a license or otherwise take disciplinary action against a person who holds a license, upon the  
17 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
18 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
19 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
20 and the board may inquire into the circumstances surrounding the commission of the crime in  
21 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
22 qualifications, functions, and duties of the licensee in question.

23            "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
24 'registration.'"

25                   9.       California Code of Regulations, title 16, section 2578, states:

26            "For the purposes of denial, suspension, or revocation of a license pursuant to  
27 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or  
28 act shall be considered to be substantially related to the qualifications, functions or duties of a

1 licensed psychiatric technician if to a substantial degree it evidences present or potential  
2 unfitness of a licensed psychiatric technician to perform the functions authorized by his license in  
3 a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include  
4 but not be limited to those involving the following:

5  
6           “(f) Any crime or act involving the sale, gift, administration, or furnishing of  
7 ‘narcotics or dangerous drugs or dangerous devices’ as defined in Section 4022 of the Business  
8 and Professions Code.”

9           10. Health and Safety Code section 11364, subdivision (a), states:

10           “It is unlawful to possess an opium pipe or any device, contrivance, instrument, or  
11 paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in  
12 subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in  
13 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or  
14 (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a  
15 controlled substance which is a narcotic drug classified in Schedule III, IV, or V.”

16           11. Health and Safety Code section 11377, subdivision (a), states:

17           “Except as authorized by law and as otherwise provided in subdivision (b) or  
18 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
19 Business and Professions Code, every person who possesses any controlled substance which is  
20 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in  
21 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),  
22 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
23 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
24 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
25 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
26 than one year or in the state prison.”

27           12. Section 118(b) of the Code provides, in pertinent part, that the expiration  
28 of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during



1 the period within which the license may be renewed, restored, reissued or reinstated. Under  
2 section 4545 of the Code, the Board may renew an expired license at any time within four years  
3 after the expiration.

4 13. Section 125.3 of the Code provides, in pertinent part, that a Board may  
5 request the administrative law judge to direct a licensee found to have committed a violation or  
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
7 and enforcement of the case.

#### 8 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

9 14. Methamphetamine is a Schedule II controlled substance as designated by  
10 Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug  
11 pursuant to Business and Professions Code section 4022.

#### 12 FIRST CAUSE FOR DISCIPLINE

##### 13 (Conviction of Substantially Related Crime)

14 15. Respondent is subject to disciplinary action under sections 490 and 4521,  
15 subdivision (a) of the Code, in conjunction with California Code of Regulations, title 16, section  
16 2578, in that Respondent has been convicted of a crime substantially related to the qualifications,  
17 functions or duties of a psychiatric technician, as follows:

18 a. On or about April 11, 2005, in a criminal proceeding entitled *The People*  
19 *of the State of California v. Adam Swearingen* in Los Angeles County, South District, Superior  
20 Court, Case No. NA065191, Respondent was convicted for violating Health and Safety Code  
21 section 11370.1(a) (possession of a controlled substance with a firearm), a felony.

22 b. The circumstances of the conviction are that on or about March 30, 2005,  
23 Respondent possessed methamphetamine while armed with a loaded, operable firearm.

#### 24 SECOND CAUSE FOR DISCIPLINE

##### 25 (Conviction of Crime Involving Controlled Substance)

26 16. Respondent is subject to disciplinary action under section 4521,  
27 subdivision (a)(4), in conjunction with California Code of Regulations, title 16, section 2578, ,  
28 subdivision (f), on the grounds of unprofessional conduct, in that on or about April 11, 2005,

1 Respondent was convicted of a crime involving the controlled substance and dangerous drug  
2 methamphetamine, as more fully described above in paragraphs 15(a) and (b).

3 THIRD CAUSE FOR DISCIPLINE

4 (Unlawful Possession of Methamphetamine)

5 17. Respondent is subject to disciplinary action under Section 4521,  
6 subdivisions (a)(4) and (f), in conjunction with California Code of Regulations, title 16, section  
7 2578, subdivision (f), for engaging in unprofessional conduct and violating Health and Safety  
8 Code sections 11377 and 11364, in that on or about March 30, 2005 [see above paragraphs 15(a)  
9 and (b)], Respondent was in possession of controlled substances, dangerous drugs and drug  
10 paraphernalia, without valid prescriptions, to an extent or in a manner dangerous or injurious to  
11 himself, any other person, or the public. The circumstances of the March 30, 2005 possession  
12 are as follows:

13 a. On or about March 30, 2005, Los Angeles Police Department officers  
14 conducted a traffic stop. Upon a consented search of Respondent, the officers found and booked  
15 into evidence a loaded Smith and Wesson 9MM handgun and an approximately four inch glass  
16 pipe, containing methamphetamine.

17 DISCIPLINE CONSIDERATIONS

18 18. To determine the degree of penalty to be imposed on Respondent, if any,  
19 Complainant makes the following allegations:

20 a. On or about June 30, 1994, in a prior criminal proceeding entitled *The*  
21 *People of the State of California v. Adam Swearingen* in Los Angeles Superior Court, Case  
22 Number NA020276, Respondent was convicted for violating Health & Safety code section  
23 11350(a) (possession of designated controlled substances), a felony. The court deferred entry of  
24 the judgment and allowed Respondent to enter into the drug court program. On or about August  
25 9, 1995, following Respondent's completion of the court ordered drug court program, the  
26 deferred entry of judgment against Respondent was set aside and the charge against him was  
27 dismissed by the court.

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1           b.     On or about March 10, 1992, in a prior criminal proceeding entitled *The*  
2 *People of the State of California v. Adam Christopher Swearingen* in Los Angeles Superior  
3 Court, Case Number 92S02297, Respondent was convicted for violating Vehicle code section  
4 14601.1(a) (driving with suspended license), a misdemeanor.

5                                 PRAYER

6           WHEREFORE, Complainant requests that a hearing be held on the matters herein  
7 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
8 Technicians issue a decision:

- 9                         1.     Revoking or suspending Psychiatric Technician License Number PT  
10 30194, issued to Adam Christopher Swearingen Adam Christopher Swearingen.  
11                         2.     Ordering Adam Christopher Swearingen to pay the Board of Vocational  
12 Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of  
13 this case, pursuant to Business and Professions Code section 125.3;  
14                         3.     Taking such other and further action as deemed necessary and proper.  
15

16 DATED: April 2, 2008

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19 

TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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